

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CITIZENS FOR PERSONAL WATER RIGHTS,	:	NO. 00-01,900
by DAVID A. BROOKS, Trustee Ad Litem	:	
and DAVID A. BROOKS, individually	:	
Plaintiffs	:	CIVIL ACTION LAW/EQUITY
vs.	:	Preliminary Objections
	:	
BOROUGH OF HUGHESVILLE	:	
Defendant	:	

OPINION AND ORDER

Before the Court are Defendant's Preliminary Objections to Plaintiff's Second Amended Complaint. Argument on the objections was heard July 17, 2001.

On November 13, 2000, the Borough of Hughesville enacted Ordinance 2-2000, Mandatory Water Connection, requiring all owners of improved properties within 150 feet of any water main to connect to the water main on or before December 1, 2002. Plaintiffs request the Court enjoin enforcement of the Ordinance or in the alternative, require the Borough to conduct a study and make findings of fact regarding the necessity for the Ordinance, declare the Ordinance improper and illegal and require enunciation by the Borough of empirical data and findings of fact to support the Ordinance, and to grant such monetary relief to Plaintiffs to which they may be entitled, including attorney's fees. In its preliminary objections, Defendant contends the Court has no authority to direct the Borough to make findings of fact, that there is no authority for Plaintiff's request for legal fees, that there is no authority for an award of monetary damages and that there is no constitutional right to private well water use to support the action Plaintiffs bring under 42 U.S.C. Section 1983, thus contending Plaintiffs fail to state a claim for which relief may be granted.

The Court agrees with Defendant that Plaintiff has failed to provide any authority for the Court to require the Borough to conduct a study and make findings of fact to support the Ordinance. The

Ordinance itself indicates that its purpose is to protect and provide for the public health, safety and general welfare of its citizens, and to ensure an adequate and safe water supply for the people of Hughesville Borough, both of which are consistent with the authority granted to it by the Borough Code at 53 P.S. Section 46202 (39), which gives the Borough the power and authority:

To provide a supply of water and to make regulations for the protection of the pipes, reservoirs, and other constructions or apparatus, to prevent the waste of water so supplied, and to regulate the drilling of wells within the Borough.

Defendant's objection to this request will therefore be sustained.

The crux of the matter actually lies in Defendant's objection that Plaintiffs have failed to state a claim for which relief may be granted based on the contention there is no constitutional right to private well water use, and therefore there can be no Section 1983 claim. The Court does agree with Defendants in this regard. While Plaintiffs point to cases which recognize a property owner's property rights in his usual water supply, Perla v Commonwealth, 139 A.2d 673 (Pa. 1958) and Hatfield Township v Lansdale Municipal Authority, 168 A.2d 333 (Pa. 1961), those cases involve the total elimination of a property owner's water supply. In the instant matter, Defendants are not depriving the property owners of their water supply, but, rather are simply substituting a public water supply for a private water supply. In light of the Borough Code's grant of authority to boroughs to establish a public water supply, the Court cannot find that the property owners water rights are being unconstitutionally infringed upon. Defendant's preliminary objection will therefore be sustained.¹

ORDER

AND NOW, this 24th day of September, 2001, for the foregoing reasons, Defendant's preliminary objections are hereby overruled in part and sustained in part and Plaintiffs' Second Amended Complaint is hereby dismissed for failure to state a claim upon which relief may be granted.

¹In light of this ruling, the objection to the request for attorney's fees will not be addressed.

By the Court,

Dudley N. Anderson, Judge

cc: Rodney Knier, Esq.
Howard Langdon, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson